

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
(SBC Illinois) and PaeTec	:	
Communications, Inc.	:	
	:	
Joint Petition for Approval of	:	03-0452
Second Amendment to the	:	
Interconnection Agreement dated	:	
July 1, 2003 pursuant to 47 U.S.C.	:	
§252.	:	

ORDER

By the Commission:

Procedural History

In this proceeding, Illinois Bell Telephone Company ("SBC Illinois") and PaeTec Communications, Inc. ("PaeTec") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of the Second Amendment (hereafter "Second Amendment" or "Amendment"), dated July 1, 2003, to an underlying negotiated interconnection agreement ("Interconnection Agreement" or "Agreement") pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 et seq.

A copy of the Second Amendment was filed with the joint petition, as was a statement in support of the joint petition from Jerry Gilmore, "Director-Major & Emerging Accounts Southwest for Southwestern Bell Telephone Company L.P./Illinois Bell Telephone Company d/b/a SBC Illinois Negotiations and Interconnection."

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by attorneys for SBC Illinois and the Commission Staff ("Staff"). The verified statement of Qin Liu, a Policy Analyst in the Commission's Telecommunications Division, was admitted into evidence at the hearing. In her verified statement, Ms. Liu recommended approval of the Amendment to the Agreement, subject to certain conditions regarding implementation. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received, and no other appearances were entered.

Section 252 of the Telecommunications Act of 1996

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Purpose and Terms of the Amendment to the Agreement

The Second Amendment, dated July 1, 2003, amends Section 13.6 of the Reciprocal Compensation Appendix to the underlying Interconnection Agreement between SBC Illinois and PaeTec dated April 1, 2001. Among other things, the Amendment adds language regarding the billing methodology to be used by PaeTec in billing for traffic originated by SBC Illinois and transported and terminated by PaeTec.

The Amendment also provides that except as modified therein, all other terms and conditions of the underlying Agreement remain unchanged and in full force and effect.

Staff Recommendation

Staff reviewed the Amendment to the Agreement in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff's position continues to be that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement as amended. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and SBC Illinois for termination on each other's networks and if it imposes costs on SBC Illinois that are no higher than costs imposed by PaeTec. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. According to Staff, since Section 252(i) of the 1996 Act allows similarly situated carriers to enter into essentially the same contract, this Agreement should not be deemed discriminatory.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement as amended on the basis of economic efficiency, equity, past Commission orders and state and federal law. In prior dockets, Staff has taken the position that negotiated agreements should be considered economically efficient if all the services in the agreement are priced at or above their respective long run service incremental costs ("LRSICs"). According to Staff, in the instant docket, all the services in the agreement are priced at or above their respective LRSICs; therefore, the agreement should not be considered economically inefficient. Staff also states that nothing in the Agreement is inequitable, inconsistent with past Commission orders, or in violation of state or federal law.

Staff concluded that the Amendment to the Agreement should be approved subject to Staff's recommendations regarding implementation.

With respect to implementation of the Agreement, Staff recommended that the Commission require SBC Illinois to modify its tariffs, within five days from the date the Agreement is approved, to reference the Agreement for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of Ameritech's tariffs: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15).

In addition, Staff recommended that the Commission require SBC Illinois to file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement on the Commission's web site under "Interconnection Agreements."

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Agreement as amended does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement as amended inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (4) in order to assure that the implementation of the Agreement as amended is in the public interest, SBC Illinois shall implement the Amendment by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, indicating that the approved Second Amendment to the Agreement is the same as the Amendment filed in this docket with the verified joint petition; the Chief Clerk shall place the Second Amendment on the Commission's web site under "Interconnection Agreements";
- (5) within five days of the entry of this Order, SBC Illinois shall modify its tariffs to reference the Second Amendment to the Agreement in the manner described in the prefatory portion of this Order above;
- (6) approval of the Second Amendment in this Order does not constitute approval of any future amendments referenced in or relating to the Second Amendment, and does not create any presumptions with respect to issues relating thereto;
- (7) the Second Amendment to the Agreement should be approved as hereinafter set forth;

- (8) approval of the Second Amendment to the Agreement does not have any precedential affect on any future negotiated agreements, future amendments to negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the Second Amendment, dated July 1, 2003, to the underlying Agreement between SBC Illinois and PaeTec, is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that SBC Illinois shall comply with Findings (4) and (5) hereinabove.

IT IS FURTHER ORDERED that approval of the Amendment is subject to Finding (6) above.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 8th day of October, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman